

HOWARD ROME MARTIN & RIDLEY LLP

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2 **TODD H. MASTER [SBN: 185881]**  
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5 Attorneys for Defendants KENNETH VITORELO,  
6 JACK AIELLO and CITY OF SAN CARLOS

7  
8 IN THE UNITED STATES DISTRICT COURT  
9 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

10  
11 JEFFREY A. HOWELL and SHELLEY H.K.  
12 HOWELL,

13 Plaintiffs,

14 vs.

15 KENNETH VITORELO, individually and in his  
16 capacity as a San Carlos Building Inspector;  
JACK AIELLO, individually and in his capacity  
as the San Carlos Building Official; CITY OF  
SAN CARLOS,

17 Defendants.  
18  
19

Case No. C 07-06086 MMC

**DECLARATION OF TODD H. MASTER IN  
SUPPORT OF DEFENDANTS'  
OPPOSITION TO PLAINTIFFS' MOTION  
TO HAVE AVERMENTS IN  
DEFENDANTS' ANSWER DEEMED  
ADMISSIONS AND TO STRIKE  
DEFENDANTS' AFFIRMATIVE  
DEFENSES**

**Date: February 8, 2008**  
**Time: 9:00 a.m.**  
**Courtroom: 7**  
**Judge: Hon. Maxine M. Chesney**

20 I, TODD H. MASTER, declare as follows:

21 1. I am an attorney at law duly licensed to practice before all of the courts of the State of  
22 California, and am a member of the law firm of Howard Rome Martin & Ridley LLP, attorneys for  
23 defendants CITY OF SAN CARLOS, KENNETH VITORELO, and JACK AIELLO.

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25 ///

26 ///

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1 2. I have personal knowledge of the facts stated in my Declaration, and could and would  
2 competently testify to these facts if called as a witness. To the extent that the information contained  
3 herein is based upon information and belief, I believe it to be true.

4 3. On information and belief, attached as Exhibit "A" to my Declaration is a true and correct  
5 copy of the December 18, 2007 correspondence sent by City Attorney Robert Lanzone to Mr. and  
6 Mrs. Howell.

7 4. On information and belief, attached as Exhibit "B" to my Declaration is a true and correct  
8 copy of the December 20, 2007 correspondence sent by Jeffrey Howell to City Attorney Robert  
9 Lanzone.

10 I declare under penalty of perjury under the laws of the State of California and the United  
11 States of America that the foregoing is true and correct and that this declaration was executed on  
12 this 17th day of January, 2008, at Redwood City, California.

13   
14 TODD H. MASTER

LAW OFFICES

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OF COUNSEL

MELVIN E. COHN  
(Superior Court Judge/Retired)

KENNETH M. DICKERSON

ROBERT J. LANZONE  
JEAN B. SAVAREE  
MARC L. ZAFFERANO  
GREGORY J. RUBENS  
LINDA J. NOESKE\*

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The State Bar of California  
Board of Legal Specialization

Robert J. Lanzone  
Direct Line: 650-593-5125 x204  
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December 18, 2007.

Jeffrey A. Howell  
Shelley H. K. Howell  
1350 Woodland Avenue  
San Carlos, CA 94070

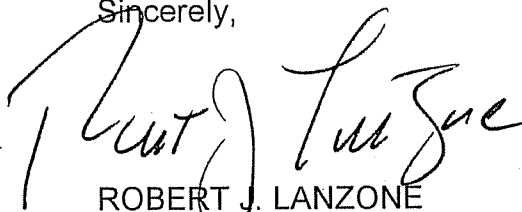
Re: Howell v. City of San Carlos  
(Northern District of California, Case No. CV 07-6086)

Dear Mr. and Mrs. Howell:

As you know, we represent the City of San Carlos as City Attorneys.

The Complaint that you have filed in the above referenced action was left with the City of San Carlos Building Department on December 3, 2007. Please be advised that the City's Building Department is not authorized and did not accept service on behalf of the City or any of its employees. In addition, neither of the employees named in the suit have been served.

Sincerely,



ROBERT J. LANZONE  
City Attorney

RJL:jm

**EXHIBIT** A

1350 Woodland Avenue  
San Carlos, CA 94070

Robert Lanzone  
City Attorney  
939 Laurel Street, Suite D  
P.O. Box 1065  
San Carlos, CA 94070

Re: Howell v. Vitorelo, et al (CV 07-6086-MMC)

December 20, 2007

Dear Mr. Lanzone:

I am writing in response to your letter dated December 18, 2007. On December 3, 2007 our process server entered the San Carlos City Hall and requested the name and location of the person who would accept service of process for Mr. Vitorelo, Mr. Aiello, and the City of San Carlos. Chris Valley approached our process server and represented to her that he was a San Carlos City Official and that he had the authority to accept service for all three defendants. Relying upon that representation, our process server did provide copies of the complaint and the supporting documentation to Mr. Valley.

Our Return of Service has been filed with the court and your answer to the complaint is due on December 24, 2007. We have included a copy for your reference. We are prepared to file a Motion for Default Judgment if an answer is not timely filed.

Regards,



Jeffrey Howell

Encl: Return of Service

EXHIBIT

B

COT-06086-JL

AO 440 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE		
Service of the Summons and Complaint was made by me		DATE 12/13/07
Name of SERVER <u>Jimmie Rudolph</u>	TITLE <u>homemaker</u>	
Check one box below to indicate appropriate method of service		
<input type="checkbox"/> Served Personally upon the Defendant. Place where served:		
<input checked="" type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: <u>Chris Valley, acting building official for the City of San Carlos</u> <u>600 Elm Street</u> <u>San Carlos, CA 94070</u>		
<input type="checkbox"/> Returned unexecuted:		
<input type="checkbox"/> Other (specify):		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
<u>none</u>		
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p>		
Executed on <u>12/13/07</u>	<u>Jimmie Rudolph</u> Signature of Server	
	<u>357 Quay Lane</u> Address of Server <u>Redwood City, CA 94065</u>	
(3) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure		

 RICHARD W. WIEKING  
 CLERK U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA